

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN JOHN C. BOHLINGER**, on March 27, 2003  
at 3:10 P.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. John C. Bohlinger, Chairman (R)  
Sen. John Esp, Vice Chairman (R)  
Sen. Jerry W. Black (R)  
Sen. Brent R. Cromley (D)  
Sen. Bill Glaser (R)  
Sen. Rick Laible (R)  
Sen. Jeff Mangan (D)  
Sen. Carolyn Squires (D)  
Sen. Mike Wheat (D)

**Members Excused:** Sen. Jim Elliott (D)  
Sen. Kelly Gebhardt (R)

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
Phoebe Olson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 663, 3/24/2003  
Executive Action: HB 663

**HEARING ON HB 663**

**Sponsor:** REPRESENTATIVE JESSE LASLOVICH, HD 57 Anaconda

**Proponents:**

**Chris Tweeten, Attorney General's Office**

**Lee Baerlocker, Department of Revenue**

**Kathy McGowen, American Cancer Society**

**Opponents:**

None

**Opening Statement by Sponsor:**

**REPRESENTATIVE JESSE LASLOVICH, HD 57 Anaconda** said he brought the bill forward at the request of the Attorney General. He briefly touched on what the bill dealt with: the Tobacco Master Settlement Agreement. It stated that it was agreed with participating tobacco product manufacturers that the states would release their claims against them in return for money and extensive restrictions on marketing and advertising. He maintained some did not sign the agreement and those groups were referred to as non-participatory manufacturers or NPM's, and this bill addressed those people. He said their market share had increased from 2% to 10% since the agreement. The attorney general's office was having great difficulty trying to enforce the current statute dealing with the NPM's. He said this bill would address their problems and hopefully make it less cumbersome to deal with the agreement. He addressed what the bill would do and maintained that Chris Tweeten could explain it in detail.

**Proponents' Testimony:**

**Chris Tweeten, Attorney General's Office** submitted testimony. He explained his packet was topped by a fact sheet, a copy of the existing non-participating manufacturer legislation, the third item is a five or six page executive summary of the bill, and finally a summary of the proposed amendment that was put on in the house. **EXHIBIT(1os65a01)**

**Lee Baerlocker, Department of Revenue** said the bill was key proof that they were trying to be diligent and protect the money that came from the tobacco master settlement agreement. He said it would also provide additional key information. He said they were in full support of the bill and hoped the committee could pass it.

**Kathy McGowen, American Cancer Society** said they were in full support of the bill.

**Opponents' Testimony:**

None

**Questions from Committee Members and Responses:**

**SENATOR JOHN ESP** asked how many of these companies they had pending actions against at the present time.

**Chris Tweeten** replied somewhere between 20 and 25 lawsuits.

**SENATOR ESP** asked how far back those lawsuits went.

**Chris Tweeten** the earliest lawsuit was is in 1999.

**SENATOR ESP** asked if it was their intention to use the tools in this bill to go after those people retroactively.

**Chris Tweeten** said the only provision of the bill that applies retroactively to pending lawsuits would be the attorney fees and costs provision.

**SENATOR ESP** asked how much money he thought they were talking about.

**Chris Tweeten** said he could get that information, but he figured it would be less than \$20,000.

**SENATOR BRENT CROMLEY** said he gave a good explanation of the bill. He said as he understood it, on the tobacco settlement the state is required to continue to pursue it's claims against the non-participatory manufacturers and those are for the same claims as in the other lawsuits for illegal manufacturing, was that correct.

**Chris Tweeten** replied the settlement did not require them to pursue those companies; it left open the option to file further lawsuits against those companies. Until their market share increases and their marketing presence becomes more significant in Montana, it would probably not be something they would actively pursue but they are left with that option.

**SENATOR CROMLEY** said the incentive to pursue those would be a reduction from the settling companies in their payments.

**Chris Tweeten** replied the incentive came from pursuing them in the sense of making them comply with these statutes. He said there was nothing in the settlement that said they are protected one way or another. He said they do have to diligently enforce the existing statute to protect their payments.

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**SENATOR CROMLEY** asked how much money these NPM's generated.

**Chris Tweeten** replied it varied from a few dollars to thousands of dollars. He maintained Montana was a relatively small market state, but if you looked at the gross number of cigarettes it was a tremendously large number. The non-participating manufacturers share of that market was somewhere between 5 and 10%.

**SENATOR CROMLEY** asked if one option was for the NPM's to enter into the settlement agreement.

**Chris Tweeten** said "yes", the settlement allowed for the non-settling companies to join.

**SENATOR RICK LAIBLE** asked if this bill would protect us from a reduction of settlements.

**Chris Tweeten** replied the adjustment under the settlement applied to all the participating manufacturer's payments. If this adjustment was found to be appropriate because there had been a loss of market share that can be causally tied to the obligations that are placed on the settling companies by the settlement, then all the participating manufacturers would get to take the 3-for-1 offset.

**SENATOR LAIBLE** questioned the effects of the settlements to the state if, when the tobacco tax went into effect, less cigarettes were sold and profits reduced.

**Chris Tweeten** said the amount that the companies pay into the settlement fund every year was based on a formula, or per cigarette charge. That rate does not change depending on what a state's taxes are.

**SENATOR LAIBLE** surmised that if fewer cigarettes were sold they would pay less money into the settlement.

**Chris Tweeten** replied that was correct.

**SENATOR LAIBLE** asked if they still got the 3-to-1 match.

**Chris Tweeten** replied he thought that would be correct.

**SENATOR LAIBLE** wondered what the bill would actually accomplish since if the market share continued to fall, they'd get less money as part of the settlement, and, conversely, if they didn't pass the bill, they'd get less money.

**Chris Tweeten** said that the reason this bill was so important was that the 3-tol reduction was not spread evenly across all the states. That reduction is only felt by those states that are not diligently enforcing their existing NPM statute.

**SENATOR ESP** asked how they enforced laws against manufacturers who sold cigarettes over the internet.

**Chris Tweeten** said they did not have a good handle on that at this time.

**Closing by Sponsor:**

**REPRESENTATIVE LASLOVICH** said he learned a lot from the questions. He thanked Chris and said it had been a joy to work with him. He hoped the committee could pass the bill.

**EXECUTIVE ACTION ON HB 663**

**Motion/Vote:** SEN. MANGAN moved that HB 663 BE CONCURRED IN.  
**Motion carried unanimously.**

**ADJOURNMENT**

Adjournment: 4:00 P.M.

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SEN. JOHN C. BOHLINGER, Chairman

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PHOEBE OLSON, Secretary

JB/PO

**EXHIBIT** (los65aad)